IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.313 OF 2007

Shelkya Zurbya Pawar
Age 27 Yrs. Labour, resident of Burli,
Tal. Tasgaon, Dist. Sangli. .. Appellant
v/s.
The State of Maharashtra .. Respondent

Ms. Nasreen Ayubi, appointed advocate by the court for the appellant.
Ms. V.R. Bhosale, Addl. Public Prosecutor for the State.

CORAM : J. H. BHATIA, J.
DATED : 9TH APRIL, 2007

ORAL JUDGMENT

Heard Ms. Nasreen Ayubi, the learned advocate appointed for the appellant who has filed this appeal from Jail and Ms. V.R. Bhosale, the learned Additional Public Prosecutor. Perused the record and proceedings. The appeal is admitted and with the consent of the counsel for both the parties, it is taken up for final hearing immediately.

2. The prosecution case is that, Crime No. 42/97 was registered at Islampur Police Station against some persons. On 13.3.1997, S.D.P.O., Islampur received information that some persons concerned with the said crime No.42/97 and other offences were likely to attend the movie at Shashiraj Touring Talkies at Walwa. The police party approached that place at about 9.00 p.m. and the police in uniform as well as in plain clothes were searching for the

absconding accused persons in the said theater. At that time, they found that two persons had tried to escape from under the screen and the tent of that theater. Dur to this, P.S.I. Vithal Patil and constable Mohan Patil immediately went out of the theater and tried to nab those two persons. The present appellant, who was accused No.1, was one of those two persons. It is alleged that the accused No.2 stabbed on the left side of the chest of P.S.I. Vithal Patil while accused No.1 also stabbed constable Mohan Patil and caused injury on his thigh. Finally, both these accused were nabbed by the police and taken to the Police Station. Against them, crime No.23/97 was registered under section 307 read with section 34 I.P.C. on the basis of F.I.R. lodged by CPI-Mane. After the investigation, chargesheet was filed under sections 307 and 332 read with 34 I.P.C. against both the accused. Accused persons pleaded not guilty and were put to trial. After trial, the accused No.1, who is the present appellant, was convicted for the offence under section 307 I.P.C. and was sentenced to undergo R.I. for seven years and to pay a fine of Rs.200/-. He was also convicted for the offence punishable under section 333 I.P.C. and was sentenced to undergo R.I. for three years and to pay a fine of Rs.200/- and in default, to undergo R.I. for three months more. Accused No.2 Bhimya was convicted for the offences punishable under sections 324 and 332 I.P.C. and was awarded different terms of sentence. The judgment was passed convicting the accused on 30th May, 2002. Accused No.1 preferred this appeal by writing letter to the High Court on 29th June, 2005. However, as the letter was not accompanied by copy of the judgment, there was long delay in registration of the appeal. Recently, it was registered as the appeal.

3. After perusal of the judgment and record, I find that there is

reliable evidence of P.S.I. Vithal Patil and other witnesses to prove that the present appellant had stabbed on the chest of Vithal Patil with a knife and had caused injury on the chest. P.W.7 Dr. Ashok Shende, who examined Vithal Patil at about 11.45 during the same night, found a stab wound over mid-axillary region directed obliquely upwards and laterally size 1”x1/2” and it was deep upto the lung. Taking into consideration the evidence on record, I find that it will be difficult to find any fault with the conviction for the offence punishable under section 307 as well as under section 333 of I.P.C.

4. The learned trial court while awarding separate sentence of imprisonment and fine on both the counts, did not give any direction that the substantive sentence of imprisonment shall run concurrently. In fact, both the offences were committed within a spur of the moment and by a single stab wound. Therefore, it would be just and reasonable to direct that the substantive sentence of imprisonment on both the counts should run concurrently. The appellant while preferring this appeal prayed that if he cannot be acquitted, at least the sentence of imprisonment may be directed to run concurrently. Ms. Bhosale, the learned A.P.P. also concedes that this would be in the interest of justice.

5. The appeal is partly allowed. While the conviction and sentence awarded by the trial court on both the counts i.e. under section 307 as well as 333 I.P.C. is maintained, it is hereby directed that the substantive sentence of imprisonment on both the counts shall run concurrently.

(J.H. BHATIA, J.)